

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

DONALD ALLEN GOSNEY,

Petitioner,

v.

DON MILLS,

Respondent.

Case No. 2:12-cv-01893-PK

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Paul Papak issued Findings and Recommendation in this case on June 23, 2014. Dkt. 29. Judge Papak recommended that the Court deny the Amended Petition for Writ of Habeas Corpus (Dkt. 24) and enter judgment dismissing this case with prejudice. Judge Papak further recommended that the Court find that Petitioner Donald Allen Gosney (“Gosney”) has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2) and deny a certificate of appealability.

Under the Federal Magistrates Act (“Act”), the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1)(C). If a party files objections to a Magistrate’s findings and recommendation, “the

court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

Gosney timely filed an objection. Dkt. 34. Gosney argues that Judge Papak erroneously concluded that Gosney’s trial counsel did not render constitutionally deficient performance. Gosney further objects to Judge Papak’s recommendation that this Court should not certify the case for appeal pursuant to 28 U.S.C. § 2253(c)(2). The Court has reviewed *de novo* those portions of Judge Papak’s Findings and Recommendation to which Gosney objected, as well as Gosney’s objections and Respondent’s response. The Court agrees with Judge Papak’s reasoning regarding Gosney’s ineffective assistance of counsel arguments and regarding the certificate of appealability and ADOPTS those portions of the Findings and Recommendation.

For those portions of a magistrate’s findings and recommendation to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report[.]”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (the court must review *de novo* magistrate’s findings and recommendation if objection is made, “but not otherwise”). Although in the absence of objections no review is required, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the Court review the magistrate’s recommendation for “clear error on the face of the record.”

For those portions of Judge Papak's Findings and Recommendation to which neither party has objected, this Court follows the recommendation of the Advisory Committee and reviews those matters for clear error on the face of the record. No such error is apparent.

The Court **ADOPTS** Judge Papak's Findings and Recommendation. Dkt. 29. The Court **DENIES** Gosney's Amended Petition for Writ of Habeas Corpus. Dkt. 24. The Court further **DISMISSES** the case **WITH PREJUDICE**.

The Court declines to issue a Certificate of Appealability on the basis that Petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 11th day of August, 2014.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge